

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

FILED

JAN 12 2001

Randy Anthony Weaver,

Petitioner,

v.

Larry W. Powers, Director of
Spartanburg County Detention Center,

Respondent.

LARRY W. PROPPES, CLERK
U. S. DISTRICT COURT

C/A No. 6:00-2981-13AK

ORDER

This matter is before this Court for a review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636 and Local Rule 73.02, D.S.C., and filed October 5, 2000. Petitioner brought this action seeking relief pursuant to 28 U.S.C. § 2254. The magistrate recommends summarily dismissing this action because Petitioner is serving a federal sentence, and § 2254 is not available to him.

Petitioner is proceeding *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).


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The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In order for objections to be considered by a United States District Judge, a party must file with the clerk of court specific, written objections that specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); see *United States v. Schronce*, 727 F.2d 91, 94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). No objections to the Report and Recommendation have been filed.

However, Petitioner has filed a "Writ of Mandamus" which this Court construes

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as a motion for default judgment. In his motion, Petitioner argues that a default judgment should be entered against Defendant for failure to respond to his §2254 petition. This Court agrees with the magistrate's conclusion that this action is subject to summary dismissal. "If the petition be frivolous or patently absurd on its face, entry of dismissal may be made on the court's own motion without even the necessity of requiring a responsive pleading from the government." *Raines v. United States*, 423 F.2d 526, 529 (4th Cir. 1970). Thus, because this case is subject to summary dismissal, Defendant was not obligated to respond to the Petitioner. Thus, after a review of the record, this Court concludes that Petitioner's argument is without merit. Accordingly, Petitioner's motion for default judgment should be denied.


After a de novo review of the record and the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law and substantial evidence supports the magistrate's findings and conclusions. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

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IT IS THEREFORE ORDERED that this petition be DISMISSED.

IT IS FURTHER ORDERED that Petitioner's motion for default judgment be DENIED.

IT IS SO ORDERED.


G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

January 11, 2001

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.